

DEPARTMENT OF DEFENSE PROCEDURES
ISSUED PURSUANT TO EXECUTIVE ORDER 12036

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PROCEDURE 17: UNDISCLOSED PARTICIPATION
IN ORGANIZATIONSSec. 1. Applicability and Scope

These procedures implement Section 2-207 of Executive Order 12036 and apply to participation by employees of Department of Defense intelligence components in any organization within the United States when participation is on behalf of such components. These procedures do not apply to the undisclosed participation by DoD employees acting on behalf of Department of Defense investigative organizations when the participation is for law enforcement purposes and is conducted under the provisions of DoD Directive 5200.27. These procedures do not apply to contracting or other arrangements for goods and services governed by Procedure 21 or to assignments of employees of DoD intelligence components to other agencies governed by Procedure 19.

Sec. 2. Definitions and Interpretations

The definitions of the following terms, set out in the Appendix, are applicable to these procedures:

- . counterintelligence
- . employee
- . foreign intelligence
- . foreign power
- . intelligence
- . international terrorist activities
- . law enforcement
- . United States
- . United States person

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"Participation" in this context means including membership, attending meetings not open to the public, contributing to the work of an organization, or providing funds to an organization other than in payment for goods or services. Participation does not include employment, or contracting for goods or services which is governed by Procedure 21; or assignment of personnel to other agencies which is governed by Procedure 19. Only actions constituting participation that are taken within the United States are covered by these procedures. Actions taken abroad, even if they constitute participation in organizations that qualify as United States persons, are not covered.

"Private Organization" in this context means a political, charitable, professional, technical, honorary, literary, social, discussion or other group that is not a government entity regardless of whether the group is incorporated and regardless of whether the members of the group are United States persons. It does not include corporations or commercial organizations that are governed by Procedure 21 on contracting for goods and services.

Participation is "on behalf of" the DoD intelligence component when the employee has been directed to participate as a part of his or her work assignment or when any information, contacts, cover, or work product of the participation is delivered to

or intended for delivery to or for the benefit of the DoD intelligence component. Personal participation for the purpose of increasing an employee's store of knowledge, personal associations or social contacts or for the benefit of an employee's extra-curricular interests are not covered by these procedures.

Sec. 3: Policy

Employees of Department of Defense intelligence components do not participate within the United States in private organizations without disclosing their affiliation with the Department and with the intelligence component unless the participation is for personal and not official purposes or unless participation without disclosure has been approved by the Secretary of Defense [or his designee. ILLEGIB

Sec. 4: Procedures

A. Employees of DoD intelligence components may participate in technical seminars, associations, conferences, workshops, computer hardware and software or other equipment user groups, and other similar technical meetings or organizations on behalf of such components without disclosing their affiliation with such components provided their participation is limited to technical exchanges and provided further that they identify themselves as employees of the Department of Defense.

B. Employees of DoD intelligence components may on behalf of each component attend meetings, conferences, exhibitions, displays, trade fairs or gatherings sponsored by private organizations without disclosing their affiliation with such components if:

1. The private organization has made the activity open to the public;
2. No pre-registration or registration fee is required to be paid by the employer; and
3. The private organization does not request disclosure of affiliation from all attendees.

C. Employees of DoD intelligence components may participate in educational and training classes, seminars, symposiums, workshops and other similar endeavors on behalf of such component provided their participation is limited to the educational and training benefits to be derived therefrom and provided further that they identify themselves or employees of the Department of Defense.

D. Employees of DoD intelligence components may participate in private organizations on behalf of such components without disclosing their affiliation with such components if a determination has been made by the Secretary of Defense or his designee that nondisclosure is essential to achieving lawful purposes. In order to make that determination, ^{or} the Secretary of his designee must find that the undisclosed participation falls within one of the following criteria:

1. Undertaken at the written request of the Director of the Federal Bureau of Investigation specifying that the participation is required to support a lawful investigation approved by the Director.

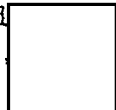
Bilateral counterespionage operations undertaken by DoD counterintelligence elements in cooperation with and at the request of the FBI and in compliance with DoD Directive 5210.27 are included in this category.

2. Undertaken with respect to an organization composed primarily of individuals who are not United States persons and who are reasonably believed to be acting on behalf of a foreign power.

"United States person" is a defined term and should be construed strictly. An organization is not primarily composed of United States persons or when the objective of the organization is to recruit and have as members primarily persons who do not qualify as United States persons. "Reasonable belief" is determined in accordance with the guidance in the Appendix. "Foreign power" is a defined term and should be construed strictly. An action is taken on behalf of a foreign power when it is done to further an activity, capability or intention of a foreign power. An organization acts only through its members, officers, employees and agents. The act of a person may be attributed to the organization when it was done at the direction of or for the benefit of the organization.

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3. Undertaken to provide cover related to lawful foreign intelligence or counterintelligence activities and is limited in nature, scope and duration to that



A foreign intelligence or counterintelligence activity is lawful if it is conducted by a DoD intelligence component authorized to do so and if the techniques used to carry out the activity are lawful.

4. Undertaken to provide contact with a person who is reasonably believed to be a potential source of foreign intelligence information or a potential contact who will lead to a potential source of foreign intelligence or counterintelligence information.

"Reasonable belief" should be determined in accordance with the guidance in the Appendix. A potential source is a person who is situated by knowledge, training, experience, position, responsibility, or access so as to have foreign intelligence or counterintelligence information. "Foreign intelligence" and "counterintelligence" are defined terms. A potential contact is a person who is situated by acquaintance, friendship, affiliation, position or other factor to be able to have contact with a potential source. Information that may be collected about a United States person who is reasonably believed to be a potential source or contact is limited to that necessary for the purpose of determining the suitability or credibility of such persons.

5. Undertaken to provide contact with a person who is reasonably believed to be engaged in international terrorist activities.

"International terrorist activities" is a defined term and should be construed strictly. "Reasonable belief" should be determined in accordance with the guidance in the Appendix. A person is "engaged in" an activity only after some overt action has been taken in furtherance of the activity. Oral or written communications about an activity are not sufficient to meet the "engaged in" standard.

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6. Undertaken to identify a person who is in contact with someone who is a foreign intelligence target.

A person is a "foreign intelligence target" if foreign intelligence information is sought from the person. "Foreign intelligence" is a defined term. The person who is the foreign intelligence target may be either a United States person or a foreigner. "Contact" in this context means reasonable cause to believe there has been an oral or written communication between persons, either directly or through an intermediary. The information that may be collected about the foreign intelligence target is limited to information necessary to identify that person, including name, address, employment and associates.

E. The designees of the Secretary of Defense for purposes of Section 4(C) are the Secretaries of the Military Departments and their single designees; and the Deputy Assistant Secretary of Defense (Administration).

F. All participation in private organizations covered by these procedures and not within Section 4(A), (B), or (C) requires disclosure of affiliation. Disclosure is adequate if made to an executive officer of the organization or to an official in charge of membership or records for the organization.

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PROCEDURE 19: ASSIGNMENT OF INTELLIGENCE
PERSONNEL TO OTHER AGENCIES

Sec. 1: Applicability and Scope

These procedures implement section 2-304 of Executive Order 12036 and apply to the assignment of Department of Defense intelligence personnel to other agencies within the federal government. These procedures do not apply to assignment to state or local governments, or to corporations or other private organizations.

Sec. 2: Definitions and Interpretations

The definition of the term "employee," set out in the Appendix, is applicable to these procedures.

Sec. 3: Policy

Employees of DoD intelligence components who are assigned to work for and under the direction of another agency of the federal government will for the duration of their assignment conduct themselves as if they were employees of that agency and any responsibilities to provide information to or services for the Department of Defense will be stated expressly and made a part of the terms of the assignment.

Sec. 4. Procedures:

A. Assignment of employees of DoD intelligence components to other agencies within the federal government is governed by DoD Directive 1000.17, "Department of Defense Personnel

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Assigned to Duty Outside the Department and Supporting Non-DoD Activities." The memorandum of agreement concerning such assignment and required by Section D.6.(c)(1) of the Directive shall include:

1. An identification of the DoD intelligence component from which the employee has been assigned by DoD.
2. A statement delineating the employee's responsibilities for reporting to DoD about matters that come to his attention while on assignment outside DoD.

B. Other than is permitted by the terms of the memorandum of agreement pursuant to DoD Directive 1000.17, an employee of a DoD intelligence component on assignment to another agency of the federal government may not report to any DoD component on the affairs of the agency to which the employee is assigned. "Reporting" in this context means transmission of information about the operations or personnel of the agency that is not available publicly. The term "available publicly" is a defined term and should be construed strictly.

C. After completion of an assignment to another agency of the federal government and return to DoD, an employee remains under the same restrictions as to reporting that applied when he or she was on assignment.

PART III: RESTRICTIONS WITH RESPECT TO
OTHER INTELLIGENCE ACTIVITIES

- Procedure 20: Experimentation on Human Subjects
- Procedure 21: Contracting within the United States
- Procedure 22: Assassination
- Procedure 23: Special Activities
- Procedure 24: Assistance to Law Enforcement
Activities

PROCEDURE 23: SPECIAL ACTIVITIES

Sec. 1: Applicability and Scope

These procedures implement Section 2-306 of Executive Order 12036 and apply to the conduct and support of special activities by DoD intelligence components. These procedures also apply to other DoD components that provide support for special activities conducted by DoD intelligence components and other agencies within the Intelligence Community. These procedures do not apply to diplomatic or military attache activities conducted by the Department of Defense, to the collection and production of intelligence, or to any functions in support of the collection and production of intelligence. These procedures do not apply to the conduct of special activities by the military services in wartime.

Sec. 2: Definitions

The definitions of the following terms, set out in the Appendix, are applicable to these procedures:

- . intelligence
- . United States

✓ "Support" when used in this context means the provision of assistance in the form of transportation, training, supplies, equipment or expert personnel.

"Special activities" means activities conducted abroad in support of national foreign policy objectives which are designed

to further official United States programs and policies abroad and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but not including diplomatic and military attache activities or the collection and production of intelligence and related support functions.

"Diplomatic and military attache activities" means the range of representational, information gathering, and reporting activities performed by diplomatic and military attache personnel abroad.

"Production of intelligence" means the process of developing "intelligence products" which is a defined term.

Sec. 3: Policy

✓ Special activities may be conducted and support for special activities may be provided only upon the recommendation of the Secretary of Defense and the approval of the President.

Sec. 4: Procedures

✓ A. Special activities may be conducted only abroad.
Support for special activities may be provided through activities within the United States.

B. Special activities may be conducted only by a DoD intelligence component after a determination by the President that the DoD intelligence component is more likely than the CIA to achieve the objective of the special activity.

C. Support for special activities may be provided by the Department of Defense only upon approval of the President.

D. Support may be provided by a DoD intelligence component or other DoD component but the identity of the component and a description of the support to be provided by that component must be included in the policy recommendation from the Special Coordination Committee to the President and must be set out specifically in the Presidential approval.

Sec. 1: Applicability and Scope

These procedures implement Section 2-303 of Executive Order 12036 and apply to contracting or other arrangements for the procurement of goods and services by DoD intelligence components within the United States. These procedures apply to contracting with or procurement from corporations, commercial organizations, academic institutions and other private institutions. These procedures do not apply to contracting outside the United States, to contracting with government entities, or to contracting with individual persons.

Sec. 2: Definitions

The definitions of the following terms, set out in the Appendix, are relevant to these procedures:

- . contractor
- . commercial organization
- . corporation
- . cover
- . intelligence

An "academic institution," in this context, is an institution that is operated or holds itself out as a degree-granting institution. Both public and private academic institutions are treated the same for this purpose.

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The term "private institution" includes associations, organizations and other entities that have no government affiliation and that do not fall within the categories of corporation, commercial organization, or academic institution.

A contract is with an individual rather than the organization with which the individual is affiliated when it is in writing, only the name of the individual appears as a contracting party, and no part of the consideration is specified in the contract as payable to the organization.

Contracting or other procurement arrangements are "within the United States" when the contract is entered at a place within the United States. Contracts entered outside the United States are not included even if the contractor is a United States person and the goods and services are to be delivered wholly or in part within the United States.

Sec. 3: Policy

The Department of Defense discloses the maximum amount of information about the sponsorship of contracts for goods and services that is consistent with the need for protection of intelligence activities or intelligence sources and methods from disclosure.

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Sec. 4: Procedures

A. Contracting by or for DoD intelligence components with academic institutions may be done only in compliance with the following requirements:

1. No DoD intelligence component may enter a contract for goods or services with an academic institution unless, prior to the making of the contract, the intelligence component has disclosed to appropriate officials of the academic institution the fact of sponsorship by a DoD intelligence component.
2. No DoD component may enter a contract with an academic institution for the provision of goods and services to be used primarily by or for the principal benefit of a DoD intelligence component unless prior to the making of the contract, the DoD component has disclosed to appropriate officials the fact of sponsorship by a DoD intelligence component.
3. Disclosure is adequate if --
 - (a) the name of the DoD intelligence component appears on the face of the contract as a contracting party or as a component authorized to take delivery of goods or services under the contract;
 - (b) there is appended to the contract a classified annex stating that the goods or services to be delivered under the contract are for the use of a DoD intelligence component;
 - (c) the contracting officer or an executive officer of the academic institution is informed orally of sponsorship of a DoD intelligence component and a written memorandum describing the information given to the officer and the time and place of the oral communication is made a part of the contract files of the DoD intelligence component; or

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- (d) the person in charge of delivering the goods or services to be provided under the contract with the academic institution provides a written assurance that the contracting officer or a chief executive officer of the academic institution has been informed of the sponsorship of a DoD intelligence component.

Under subsections (b), (c) and (d) disclosure need not include the identity of the specific DoD intelligence component that will receive the goods or services.

B. Contracting by or for a DoD intelligence component with corporations, commercial organizations or private institutions may be done only in one of the following circumstances:

1. There has been disclosure, prior to the making of the contract, of the fact of sponsorship by a DoD intelligence component. Disclosure is adequate if --
 - (a) the name of the DoD intelligence component appears on the face of the contract as a contracting party or as a component authorized to take delivery of goods or services under the contract;
 - (b) there is appended to the contract a classified annex stating that the goods or services to be delivered under the contract are for the benefit or use of a DoD intelligence component; or
 - (c) the contracting officer or an executive officer of the corporation, commercial organization or private institution is informed orally of the sponsorship of a DoD intelligence component and a written memorandum describing the information given to the officer and the time and place of the oral communication is made a part of the contract files of the DoD intelligence component.

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2. The contract is for written material that is available publicly, such as books, magazines, and journals available to the general public, or for goods or services for routine office maintenance such as telephone, cleaning, heating, and light and other utilities.
3. There is a written determination by the Secretary of a Military Department or his designee, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), or the Deputy Under Secretary (Policy) that the sponsorship of a DoD intelligence component needs to be concealed. That determination must be supported by findings that:
 - (a) concealment is necessary to maintain cover or proprietary arrangements;
 - (b) the cover or proprietary arrangements to be maintained are essential to the intelligence activities of a DoD component; and
 - (c) the activities of the DoD component for which cover or proprietary arrangements are used are authorized intelligence activities.

C. Contracting by or for a DoD intelligence component with an individual person may be done only if there has been oral or written disclosure of the sponsorship by the intelligence component or a determination under subsection B(2) has been made.



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D. DoD intelligence components and procurement components may place with or accept from other agencies within the Intelligence Community requests to procure goods and services from corporations, commercial organizations, and private institutions in order to protect from disclosure sensitive intelligence activities, facilities, or relationships. Such requests shall be in writing, and shall contain a determination by the requestor that such action is necessary to maintain essential cover or proprietary arrangements and that the activity is for authorized intelligence purposes.

E. No contract shall be void or voidable for failure to comply with these procedures.